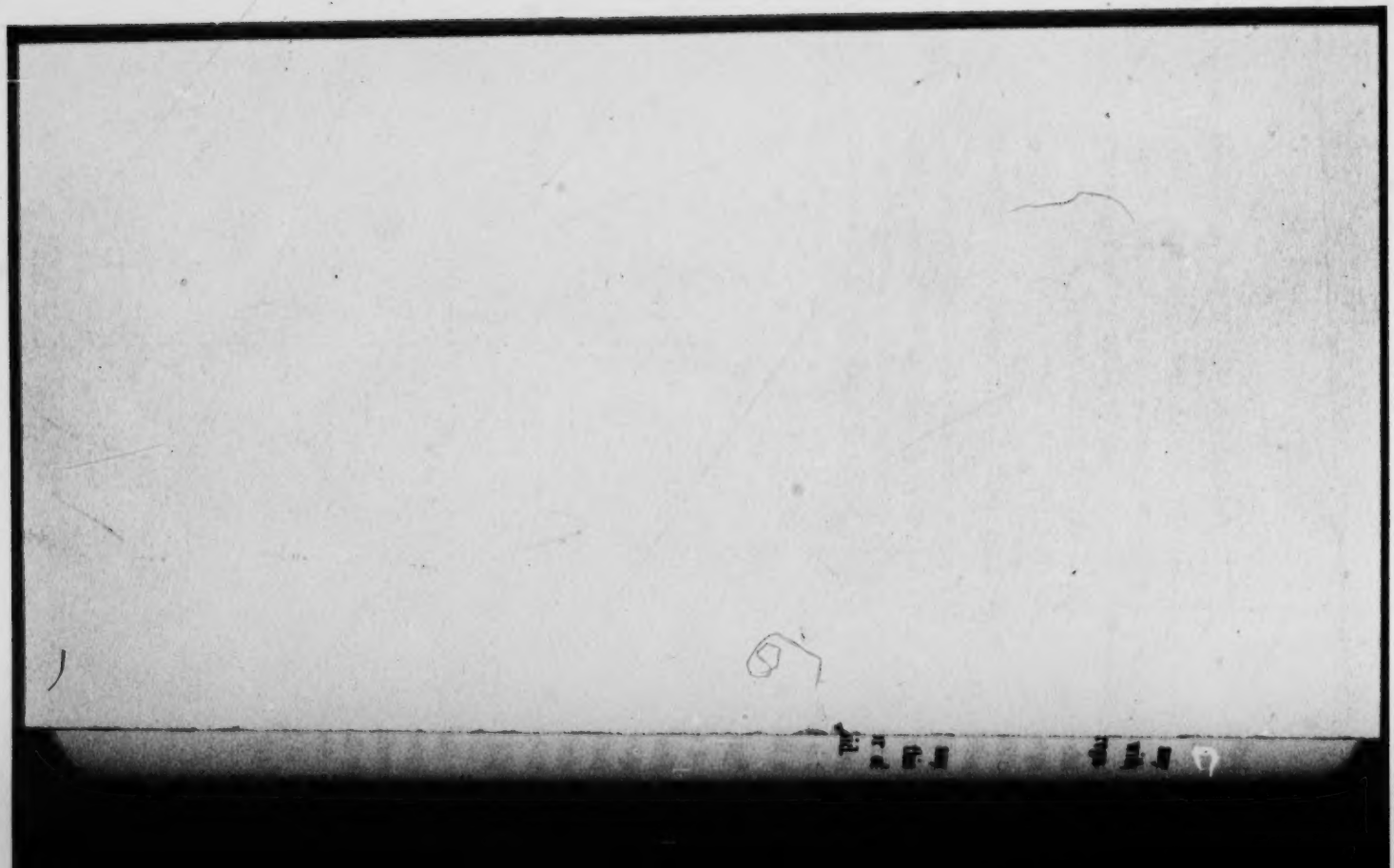

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 73-781.

FRITZ SCHERK,

Petitioner,

vs.

ALBERTO-CULVER COMPANY,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

QUESTION PRESENTED.

Respondent Alberto-Culver Company ("Alberto") respectfully submits that the "Question Presented" as formulated by Petitioner Scherk is inaccurate. The Opinions of both the District Court and the Court of Appeals made it clear that the arbitration clause of the Agreements here involved was not held invalid simply "because a claim, as yet not proven, has now been made that the Securities Exchange Act of 1934 has been violated." (Petition, p. 2.) Rather, both Courts held that an agreement to arbitrate future disputes was unenforceable under Section 29(a) of the Exchange Act, 15 U. S. C. § 78cc(a), where the defendant, a foreign national, was alleged to have committed securities fraud *in the United States* to the injury of an American company in violation of Section 10b of the Exchange Act and Rule 10b-5 promulgated thereunder.

STATEMENT OF THE CASE.

Petitioner's "Statement of the Case" omits significant facts necessary to gain perspective as to the issues adjudicated below. Accordingly, a Counter-Statement is required.

Alberto is a Delaware corporation with its principal place of business in Melrose Park, Illinois, and is engaged in manufacturing and mass marketing of toiletries and other products. (App. 2, 18; Lavin Affidavit, para. 1-2.)* The Defendant Scherk is a German citizen residing in Geneva, Switzerland. (App. 2, 18; Scherk Affidavit, para. 1.) Prior to February 1969 Scherk owned several interrelated businesses which manufactured and sold cosmetic products primarily in Western Europe. (App. 2, 18-19; Lavin Affidavit, para. 2; Scherk Affidavit, para. 2.)

Most of Scherk's direct manufacturing operations were in Berlin, Germany, in a sole proprietorship called Firma Ludwig Scherk ("FSL"). (Lavin Affidavit, para. 2.) Another Scherk business was Lodeva Herstellung und Vertrieb Kosmetischer Artikel GMBH ("Lodeva"), a German limited liability company. (App. 2, 19.)

Scherk also owned a 100% interest in Scherk Etablissement Vaduz ("SEV"), a form of Liechtenstein corporation, which was a holding company internationally licensing sales of Scherk products under trademarks purportedly owned by SEV. (App. 2, 19; Lavin Affidavit, para. 3.)

Prior to June 1968, exploratory negotiations between Alberto and Scherk took place for the sale by Scherk of all or part of the Scherk businesses. In December 1967 Mr. Leonard Lavin, Alberto's president, met personally in Melrose Park, Illinois, with Mr. Benjamin Navon, Scherk's plant manager, and discussed with him the nature and background of Scherk's businesses. (App. 2-3, 19; Lavin Affidavit, para. 5; Scherk Affidavit, para. 2.)

* The affidavits cited were filed with the District Court and were reproduced in the appendix before the Court of Appeals but have not been included in the appendix to the Petition.

Navon pointed out to Lavin that, although the "German business" (FLS) had experienced serious financial difficulties in recent years, the "Scherk International Business" (SEV) had earned substantial profits through royalty income derived from its trademark-licensing arrangements. Navon stated that the success of SEV was due in large part to the effective exploitation of the SEV trademark portfolio through license agreements which generated significant royalty income and that Scherk would be most reluctant to sell this "International business". (Lavin Affidavit, para. 5.)

The discussions centered mainly on a possible Alberto acquisition (for a price of $500,000) of FLS, the unprofitable German business. Scherk rejected Lavin's offer to purchase the German business. (App. 19; Lavin Affidavit, para. 5.)

Negotiations were resumed in March 1968. (App. 3, 19; Lavin Affidavit, para. 6; Scherk Affidavit, para 3.) On April 30, 1968, Scherk sent a letter to Lavin offering to come to Melrose Park and conclude agreement on a deal for virtually all of the Scherk-owned businesses, including SEV, at a much higher price:

> In order to avoid any further misunderstandings and, above all, further delays, I would suggest that my brother-in-law, Mr. Navon should come over to Chicago with our lawyer Mr. Stuart Marks, of Kaye, Scholer, Fierman, Hayes & Handler 425 Park Avenue, New York. This way a preliminary *agreement on the principles of the deal can be concluded,* leaving legal and other details to the experts.
>
> Although Mr. Navon has my power of attorney to sign and conclude any agreement *I could,* if you so wish, *come* over on shortest *notice for signature.* (Emphasis supplied.) (Letter by Scherk to Lavin, Exhibit A to Lavin Affidavit.)

As a result, Scherk and Navon, and Scherk's New York lawyer, Mr. Stuart Marks, came to Melrose Park, Illinois, in late May or June 1968 for further discussions. Scherk met with Lavin and other Alberto representatives and extensive and detailed discussions over a three-day period were held. (App. 3, 19-20; Lavin

Affidavit, para. 6; Scherk Affidavit, para. 3.) As a direct result of these discussions, Scherk and Alberto came to an agreement in Melrose Park as to the basic terms of the acquisition, including the price to be paid by Alberto. In contrast to the earlier negotiations in December 1967, the negotiations in Melrose Park in May or June 1968 were conducted on the premise that Alberto would acquire not only the unprofitable German business but the profitable SEV trademark operation as well. (App. 3, 19-20; Lavin Affidavit, para. 6.)

During the meeting in Melrose Park, Scherk, in justification of his argument that his businesses were worth substantially more than Alberto had been willing to offer, repeatedly referred to the valuable trademark portfolio owned, in particular, by the "International Business" (SEV), the great drawing power of the name "Scherk" and other trademarks owned by SEV, and the royalty profits generated by SEV through licensing of the trademark rights. Mr. Scherk also emphasized the value of the trademark portfolio to Alberto both for use in connection with Scherk products and as a means of gaining access for its own products to Germany and the licensed countries. (Lavin Affidavit, para. 7.) At no time did Scherk or Navon disclose to Lavin that the Scherk businesses lacked good title to the very trademarks which were under discussion.

As contemplated by Scherk, agreement on the basic terms of the acquisition was reached in the May-June 1968 meeting in Melrose Park, Illinois (App. 3, 20); this is evidenced by Scherk's own subsequent letter to Lavin dated June 9, 1969, prior to closing, in which Scherk stated:

> It is more than a year that we last met at *Melrose Park to agree upon a transaction* which will now, at long last, come to its closing.
>
> • • • • •
>
> . . . and I, therefore, invite you to come to Geneva at a date convenient to everybody in order to close *the deal which I was glad to have agreed to at your office, one year*

ago. (Emphasis supplied.) (Letter by Scherk to Lavin, Exhibit B to Lavin Affidavit.)

In November and December 1968, at a time when the parties' attorneys had under consideration the language of the trademark warranties to be included in the agreements, Marks sent to one of Alberto's attorneys in Chicago a telegram and a letter concerning those warranties and made a personal visit to Illinois to discuss the trademarks with Alberto. It is alleged that in those communications there also occurred material misrepresentations with respect to the ownership, validity and integrity of the trademarks. (App. 25; Silver Affidavit, para. 7.)

The agreement between Alberto and Scherk provided that SEV was to be transformed from an establissement into a stock corporation and that Alberto was to acquire 100% of the stock of the transformed corporation, Scherk Enterprises V. Aktiengesellschaft. (App. 3, 22-23.) The formal closings under the Agreements occurred on June 1969. (App. 4, 20.) The agreements of acquisition and the promissory notes were, by explicit choice of the parties, to be governed by Illinois law. (App. 3-4.)

After the acquisition of SEV, Alberto discovered that SEV's trademark portfolio, contrary to Scherk's representations, was subject to substantial encumbrances, known to Scherk and unknown to Alberto, which severely reduced the value of the portfolio. Reporting the results of their investigation of the trademarks, the law firm of Pattishall, McAuliffe and Hofstetter concluded in their letter dated April 6, 1970:

> His [Mr. Andrew's] study of the files, records and various relevant materials discloses breaches of the warranties contained in Sections 3.6(d) (unencumbered title), 3.6(e) (no pending legal or administrative actions) and 3.6(h) (use of marks where required by law). His examination also reveals that many of the matters involved had received the personal attention of Mr. Scherk and of Mr. Navon and Mr. Marks who were Scherk's representatives in the negotiations with Alberto-Culver.
>
> * * * * *

We understand, *and are personally aware*, that it was repeatedly made clear to the negotiators for Scherk that Alberto-Culver expected to receive entirely unencumbered clear title to the trademarks being transferred, and that such was the reason for Alberto-Culver's negotiators insistance upon inclusion of the trademark warranties in the agreements. . . .

In our opinion, the character, nature and value of the trademark rights as represented and warranted by Scherk differ so materially from their actual character, nature and value as to constitute a failure of consideration. Mr. Andrew's and your own recent discoveries dictate our conclusion that the Scherk trademark portfolio is encumbered with limitations, undisclosed by Scherk and not known by Alberto-Culver at the time the agreements were signed, which substantially reduce its value to any purchaser. The portfolio so encumbered must be considered of relatively small value compared to its value without such encumbrances.

Cordially yours,
B. W. PATTISHALL

(Emphasis supplied.) (Exhibit 5 to the Complaint.)

As a result, Alberto rescinded the agreements, tendered the businesses to Scherk, and, upon his refusal to make Alberto whole, brought the present action to enforce rescission under the Securities Exchange Act of 1934 and Rule 10b-5.

REASONS FOR DENYING THE WRIT.

Contrary to Scherk's contention, this is in no sense a case of first impression. In his Petition to this Court, Scherk does not challenge the correctness of the holdings of both the District Court and the Court of Appeals that:

(1) "The Complaint states a cause of action under Section 10(b) and Rule 10b-5", (App. 7, 24);

(2) the "crucial negotiations which led to the consummation of the transaction were held in Melrose Park, Illinois in May-June, 1968" (App. 7, 24);

(3) the allegations of the Complaint, if accurate, "would indicate that a serious violation of Rule 10b-5 had occurred within the Northern District of Illinois" (App. 7, 25); and

(4) "the substance of the allegedly fraudulent activity occurred within the United States" (App. 7, 26).

It follows that, for the purposes of the present Petition, Scherk does not contest the conclusion that the District Court had both subject matter and personal jurisdiction to adjudicate Alberto's Complant.

Under these circumstances, the decisions of the Seventh Circuit Court of Appeals and the District Court represent a straight-forward application of Section 29(a) of the Act and this Court's decision in *Wilko* v. *Swan*, 346 U. S. 427 (1953). Therefore, the Petition fails to meet the requirements of Rule 19 of this Court governing review on certiorari.

A. The Decision of the Court of Appeals Does Not Nullify Chapter Two of the Federal Arbitration Act.

It has repeatedly been held that the commission by a foreign national of securities fraud within this country to the injury of an American citizen, subjects the defendant to the reach of the Exchange Act and the *exclusive* jurisdiction of the United States District Courts under Section 27 of the Act. 15 U. S. C. § 78aa. *Travis* v. *Anthes Imperial Limited*, 473 F. 2d 515 (8th Cir. 1973); *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F. 2d 1326 (2d Cir. 1972); *Ferraioli* v. *Cantor*, 259 F. Supp. 842 (S. D. N. Y. 1966). Accordingly, since the Act as a whole applies to such conduct, Section 29(a) of the Act invalidates agreements to arbitrate future disputes arising thereunder. As this Court stated in *Wilko:*

> Recognizing the advantages that prior agreements for arbitration may provide for the solution of commercial controversies, we decide that the intention of Congress

> concerning the sale of securities is better carried out by holding invalid such an agreement for arbitration of issues arising under the Act. (346 U. S. at 438).

Scherk admits that *Wilko* has been applied to both the Securities Act and the Exchange Act because the anti-waiver language of Section 29(a) of the Exchange Act is virtually identical to that of Section 14 of the Securities Act. (Petition, p. 8).

Scherk, however, contends that the 1970 adherence of the United States to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (9 U. S. C. § 201-208) somehow partially overrules or supersedes Section 29 of the Exchange Act and the *Wilko* doctrine even where, as here, the defendant committed a violation of the Act within the territorial jurisdiction of the United States. In advancing this argument, Scherk has failed to include the Convention in his Appendix. Had he done so, the invalidity of his position would have immediately become apparent.

A copy of the Convention is attached hereto as an Appendix. Not only do the Convention and Chapter Two of the Arbitration Act contain no hint of any intention to repeal Section 29(a) of the Exchange Act but the Convention explicitly negates any inference of repeal by providing that it is subject to the "law" and "policy" of the Contracting States; that a court of a Contracting State need not refer the parties to arbitration if it finds that the "said agreement is not valid under the law to which the parties have subjected it" or if "it finds that the said agreement is null and void." (Article V, para. 2; Article V, para. 1(a); Article II, para. 3.

Thus, by its express terms, the Convention is subject to such legislative and judicially declared exceptions to compulsory arbitration as are contained in Section 29(a) of the Exchange Act and the *Wilko* doctrine.

B. The Decision of the Court of Appeals Does Not Conflict with the Zapata Case.

In *M/S Bremen* v. *Zapata*, 407 U. S. 1 (1972) this Court upheld an agreement containing a foreign choice-of-forum provision. The *Zapata* decision, however, involved no alleged violation of a federal statute providing exclusive jurisdiction in the federal courts and containing an anti-waiver provision such as Section 29(a). Hence, the Court of Appeals properly held *Zapata* to be inapplicable here. (App. 7). Indeed, the Opinion of the Chief Justice, in *Zapata*, makes it clear that this Court would have held an arbitration clause invalid under such circumstances as are presented here:

> A contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision. See, e.g., *Boyd* v. *Grand Trunk W. R. R.*, 338 U. S. 263 (1949) (407 U. S. at 15).

In *Wilko* this Court held that an agreement to arbitrate a future securities dispute contravened Section 14 of the Securities Act, a "strong public policy . . . declared by statute", i.e., declared by the anti-waiver provision of the Act and the statutory right of the Securities Act claimant to seek relief in the federal courts. Indeed, the *Boyd* case cited in *Zapata* as an example of an unenforceable provision was expressly relied upon by this Court in *Wilko*. (346 U. S. at 437). In *Boyd* a contract binding an employee to waive or restrict his choice of venue under the F. E. L. A. was held invalid.

The decision of the Court of Appeals is in full accord with *Zapata* as well as *Wilko*.

C. This Court Should Not Reexamine the Wilko Decision.

Scherk's next suggestion in support of his Petition is that this Court should "reexamine" the *Wilco* doctrine and limit it to situations where the parties are "of different bargaining strength"

or where there are no foreign elements of the transaction. Section 29(a), however, voids "*any* condition, stipulation or provision binding *any* person to waive compliance with any provision of this chapter or of any rule or regulation thereunder . . .". Hence, this Court's decision in *Wilko* applied to all agreements to arbitrate future disputes arising under the Act. This Court did not read "any" to mean "some" (346 U. S. at 438), even though it recognized that under some circumstances a buyer and seller of securities may deal at arm's length on equal terms. (346 U. S. at 435.) Finally, if any earlier doubt existed on the question of whether corporations are entitled to invoke the benefits of the Exchange Act, this Court reaffirmed in *Superintendent of Insurance* v. *Bankers Life and Casualty Co.*, 404 U. S. 6, 10 (1971) that "the Act protects corporations as well as individuals who are sellers of a security."

D. The Decision of the Court of Appeals Will Have None of the Unexpected and Detrimental Consequences Alleged by Scherk.

Scherk predicts "widespread" and "detrimental" consequences flowing from the decision of the Court of Appeals, ignoring the fact that the fraudulent conduct complained of here occurred in large part within this country to the injury of an American company. Congress and the courts have traditionally and properly required foreigners who do business in this country to comply with American law, including the Securities Act of 1933 and the Securities Exchange Act of 1934, and have asserted jurisdiction over any violation of those laws. *Steele* v. *Bulova Watch Co.*, 344 U. S. 280 (1952); *Travis* v. *Anthes Imperial Limited*, 473 F. 2d 515 (8th Cir. 1973); *Leasco Data Processing Equipment Corp.* v. *Maxwell*, 468 F. 2d 1326 (2d Cir. 1972); *Roth* v. *Funds of Funds, Ltd.*, 279 F. Supp. 935 (S. D. N. Y., 1968), *aff'd*, 405 F. 2d 421 (2d Cir. 1968), *cert. den.*, 394 U. S. 975 (1969), *reh. den.*, 395 U. S. 941 (1969); *Ferraioli* v. *Cantor*, 259 F. Supp. 842 (S. D. N. Y. 1966); *SEC*

v. *Gulf Intercontinental Finance Corp.*, 223 F. Supp. 987 (S. D. Fla. 1963); RESTATEMENT (SECOND) OF FOREIGN RELATIONS LAW OF THE UNITED STATES, § 17(a) (1965). If section 29(a) of the Exchange Act is to be repealed or modified to exclude all foreign nationals from its ambit, such a radical alteration of existing law should be effected by Congress. While it may be "detrimental" to a foreign defendant to be called to answer in the Courts of the country in which his violation was committed, such detriment affords no basis for overruling *Wilko* or Section 29a( ).

CONCLUSION.

The pending Petition fails to set forth any reason for the issuance of a Writ of Certiorari. The decision of the Court of Appeals does not conflict with any decision of this Court, with any decision of another Court of Appeals or with any statute. On the contrary, both the District Court and the Court of Appeals decided the controversy in accordance with the express provisions of Section 29(a) of the Exchange Act and this Court's Opinion in *Wilko* v. *Swan*. We respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

June 10, 1958

ARTICLE I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

ARTICLE II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise

between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

ARTICLE III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

ARTICLE IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) the duly authenticated original award or a duly certified copies thereof;

(b) the original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the

party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

ARTICLE V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) the parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) the award deals with a difference not contemplated by or not falling with the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent

authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) the recognition or enforcement of the award would be contrary to the public policy of that country.

ARTICLE VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V paragraph (1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

ARTICLE VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

ARTICLE VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

ARTICLE IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or

accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

ARTICLE XI

1. In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

ARTICLE XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

ARTICLE XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

ARTICLE XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

ARTICLE XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signature and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

ARTICLE XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.